

Remarks

1) Claim 69 and 70

Claim 69 recites a first receive queue having a higher priority and **larger size** than a second receive queue. The Final Office Action states that FIG. 3 of Galand (U.S. 6,226,266) shows a higher priority and **smaller size** queue with respect to lower priority queues. The Examiner will be quick to realize that a smaller sized higher priority queue is not the same thing as the recited larger sized higher priority queue. Accordingly, Attorney for Applicants requests withdrawal of the rejection of claim 69 and, for at least the same reason, the rejection of claim 70.

2) The Combination of Williams and Lee is Improper Under MPEP 2145

X.D.2

Claim 58 stands rejected as obvious over Williams (6,957,269) in view of Lee (6,859,435). The Final Office Action states that Lee does not teach away from the teaching of Williams. However, the argument presented was under MPEP 2145 X.D.2 which, unlike more commonly argued teaching away, deals with references that teach away from their combination. As presented in the previous response, MPEP 2145 X.D.2 states:

2. References Cannot Be Combined Where Reference Teaches Away from Their Combination

It is improper to combine references where the references teach away from their combination. *In re Grasselli*, 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983) (The claimed catalyst which contained both iron and an alkali metal was not suggested by the combination of a reference which taught the interchangeability of antimony and alkali metal with the same beneficial result, combined with a reference expressly excluding antimony from, and adding iron to, a catalyst.).

In this case, much like *In re Graselli*, Lee expressly excludes including a time value in a control frame. Lee states:

rather than coding the PAUSE frame's parameter to represent the period of time that the upstream neighbor should not send data frames, the parameter is coded to represent the various Transmit Feedback values [col. 14, lines 7-11]

expressly excluding the period of time in the PAUSE frame. The express exclusion, like "antimony" in *In re Graselli*, teaches away from combining Lee with a reference that includes such a period of time.

Thus, Attorney for Applicant respectfully requests withdrawal of the rejections of claim 58. For at least the same reasons Attorney for Applicant requests withdrawal of the rejections of dependent claims 60 and 61. For similar reasons, Attorney for Applicant requests withdrawal of the rejections of independent claims 62, 64, and 67 and their corresponding dependent claims.

Attorney Docket: P11856

Serial No.: 10/037,669

Response to Final Office Action Mailed 9/28/09

Page 4 of 4

If any fees are due, please apply such fees to Deposit Account No. 50-0221.

Respectfully submitted,

Dated: 11/13/2009

/Robert A. Greenberg/

Robert A. Greenberg
Reg. No. 44,133
978-553-2060